

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6774

Petition of Level 3 Communications, LLC for)
Approval of an Indirect Transfer of Control)

Order entered: 1/8/2003

I. INTRODUCTION

On September 25, 2002, Level 3 Communications, LLC ("Level 3" or the "Petitioner"), filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 107, for approval of an indirect transfer of control of Level 3 pursuant to a stock transaction.

On November 5, 2002, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of control because the proposed transaction would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Level 3 is a wholly-owned subsidiary of Level 3 Communications, Inc. ("L3 Communications"). Level 3 was issued a Certificate of Public Good to provide intrastate telecommunications services, on May 28, 1999, in Docket No. 6195. L3 Communications is not certified to provide intrastate telecommunications services. Petition at 1.

2. Pursuant to a prior stock transaction, L3 Communications sold junior convertible subordinated notes to three separate non-certificated entities. The notes are convertible into common stock in L3 Communications at any time at the option of the note holders, and are convertible into preferred stock at any time at the option of L3 Communications. The conversion

of the notes into common or preferred stock would result in one or more of the three entities holding a greater than ten percent share of the voting stock of L3 Communications. Petition at 1 and Exh. 1.

3. Level 3 will continue to operate under its current name and tariff. The only change would be in the ultimate ownership of Level 3. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 2 and Exh. 1.

4. The proposed transaction will promote the public interest in that it will allow Level 3 to obtain additional funding to support its operations overall, thereby enabling it to focus more resources on developing and refining its service offerings to customers in Vermont. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A. § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).¹ In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A. § 107 applies because the conversion of notes into over ten percent of the stock of the L3 Communications corporation of Level 3, to outside investors will result in the transfer of controlling interest of L3 Communications and, thus, the indirect transfer of control of Level 3. We further conclude that the transfer of control will not affect the services that Level 3 currently provides to customers in Vermont. Level 3 will continue to operate under its current name and tariff. The proposed transaction will also allow Level 3 access to additional funding. The resulting transfer of control,

1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

IV. CONCLUSIONS

The indirect transfer of control of Level 3 should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The indirect transfer of control of Level 3 Communications, LLC, will promote the public good and, therefore, is approved.
2. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 8th day of January, 2003.

<u>s/Michael H. Dworkin</u>)	
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<u>s/David C. Coen</u>)	PUBLIC SERVICE
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)	BOARD
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)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: January 8, 2003

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apL3 Communications errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.